

JUN 6, 1985

MEMORANDUM

SUBJECT: Prohibition on Use of Hazardous Waste for  
Dust Suppression or Road Treatment

FROM: John H. Skinner, Director  
Office of Solid Waste (WH-562)

TO: Waste Management Division Directors  
Regions I - X

The Hazardous and Solid Waste Amendments of 1984 (HSWA) ban the use of hazardous waste and materials mixed with hazardous waste as a dust suppressant. This memorandum explains how EPA interprets the new provision.

THE HSWA

Section 213 of the HSWA amended Section 3004 of RCRA by adding a new paragraph (1) to read as follows:

“(1) Ban on dust suppression. The use of waste or used oil or other material which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under Section 3001 (other than a waste identified solely on the basis of ignitability) for dust suppression or road treatment is prohibited.”

EPA recently amended (in the Codification Rule, signed by the Administrator April 20, to be published in the next two weeks) 266.23, the standards for persons using hazardous waste in a manner constituting disposal, to include verbatim the prohibition. In addition, §261.33 (setting out requirements for discarded commercial chemical products) has been amended to provide that the materials and items listed in §261.33 are hazardous wastes when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment. In effect, this conforming change provides that the requirements of Section 3004 (1) will apply to any §261.33 product that is mixed with waste oil or used oil or other material and used for dust suppression or road treatment.

STATUTORY INTERPRETATIONS

Several questions may arise as you implement this prohibition. EPA interprets Section 3004 (l) to impose the following requirements:

- Any material used as a dust suppressant is at least potentially subject to the prohibition. Although “used” or “waste” oil is the most common material used for dust suppression, the Act’s language includes the term “. . .or other material...”
- The prohibition applies when a material is mixed with any listed hazardous waste including a waste listed for ignitability.<sup>1</sup> This means a mixture containing hazardous waste from small quantity generators a otherwise exempt under §261.5, is subject to the prohibition nonetheless.<sup>2</sup>
- The Agency interprets the prohibition to apply to hazardous waste (whether or not it is part of a mixture). Under this interpretation used oil exhibiting EP toxicity, for example, must not be used as a dust suppressant.

For the prohibition to apply the material being used for dust suppression must actually be a hazardous waste. For example, a characteristic waste that is blended with petroleum so that the resultant mixture no longer exhibits any of the characteristics would not be subject to the prohibition.

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- 1/ The statutory language makes it clear that the provision exempts from the prohibition any material that is mixed with a waste hazardous solely because it exhibits the ignitability characteristic. Materials mixed with any listed wastes are subject to the ban.
- 2/ The mere presence of constituents identified in Appendix VIII of Part 261 is not alone sufficient proof that any mixing has occurred. EPA continues to bear the burden of proof in any individual case to show that mixing has occurred. As a point of information, EPA proposed on January 11, 1985, that used oil used as fuel with a chlorine content exceeding 4000 ppm total chlorine would be presumed to be mixed with hazardous waste. [See 50 FR 1691-1692.]
- 3/ In contrast, used oil that contains hazardous constituents but has not been mixed with hazardous waste and does not exhibit a characteristic may be used as a dust suppressant. This is because used oil is not presently listed as a hazardous waste.

- Because the ban applies to hazardous waste and materials mixed with hazardous waste, a mixture containing dioxin is subject to the prohibition only when the dioxin comes from a hazardous waste or when the material is otherwise a hazardous waste. (As stated in footnote 2, the presence of a hazardous constituent is not alone sufficient proof that mixing has occurred.)

### USED OIL LISTING

The HSWA requires EPA to propose a listing determination for used car and truck crankcase oil by November 8, 1985, and to make a final listing determination on all used oil by November 8, 1986. [Section 3014 (b) of the amended RCRA.] Under the interpretations discussed above, any used oils eventually listed as hazardous waste would be prohibited from use as a dust suppressant.

cc: Mark Greenwood, OGC